No. 7504.

In the United States Circuit Court of Appeals

For the Ninth Circuit.

L. H. Wolf,
Petitioner,
vs.
Commissioner of Internal Revenue,
Respondent.

On Petition for Review of Decision of the United States Board of Tax Appeals.

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT.

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SCOPE OF THIS BRIEF.

This brief does not propose to cover all the grounds upon which the judgment should be for the appellant, nor to duplicate appellant's brief, but by further reasons, and by additional facts (presumed by the oral stipulation of the parties [R. 39, 40] to be in the record, and specially set forth herein), to make even more evident that no "gain" was "derived" by petitioner from said award or street proceeding; and, by another view of the application of

Section 112(f) of the Revenue Act of 1928, to show that any apparent gain should not be recognized, but that the payment of the assessment on the two remainders (to be left after the part condemned was taken) should be treated as a "reinvestment" in other property similar or related in service or use to the property condemned.

ARGUMENT.

Petitioner derived no gain from the award because:

I.

Under the 1903 Street Act and the conduct of this street proceeding thereunder the assessment must be treated at the present time as an expense inseparably connected with the award, and the award cannot be considered as a closed transaction separated from the assessment, but the whole proceeding, including the assessment as well as the award, must be treated as one transaction, and only the net result of the whole proceeding should be considered in determining whether or not gain in the constitutional sense has been derived; and,

II.

Petitioner exercised his legal right to offset the award against the assessment and therefore in fact as well as in contemplation of the income tax amendment he actually received no gain; and,

III.

The provision of Section 23(c)(3) of the Revenue Act of 1928, asserted to require deferring deduction of the assessment until the remainder is sold, have no application and do not control the assessment here made to pay the award; and,

IV.

If any profit may be deemed to have been realized on this award, then the payment of the assessment upon the remainder by offsetting the award amounts to an acquisition of a paramount title and interest in the remainder, and the remainder being a part and parcel of the same land from which the part condemned was taken, the two (the part taken and the remainder), are obviously not only similar or related in service or use, but are identical in service and use, and therefore within the provisions of Section 112(f) of the Revenue Act of 1928 which prescribe that gain under those circumstances shall not be recognized.

STATEMENT.

For brevity, and to avoid unnecessary repetition, respondent's statement of facts, as set forth in respondent's brief, pages 2-7, inclusive, are hereby incorporated herein by reference. Hence, we give here only a brief picture, a resumé of the main facts. Others will be adverted to in argument. The main facts follow:

A street proceeding was conducted by the City of Los Angeles under and in conformity with the Street Opening Act of 1903, and a 70-foot strip through the center of petitioner's parcel of land was taken pursuant thereto. Said street proceeding required that virtually the entire cost of the acquirng of the lands for the street be assessed against the lands described in the Assessment District. Petitioner was awarded $23,549.00 for land taken, exclusive of severance and damage to buildings. He was assessed $38,713.60 upon the remainder of said property to pay for the cost of acquiring the land. He availed himself of the provisions of the Street Act, giv-

ing him the option to require the said award of $23,549.00 (plus other award for severance and building damage), to be applied upon said assessment of $38,713.60, and it was so offset. [Stipulation of Facts, R. 30-33.]

Additional facts as shown by the official records in connection with said condemnation proceeding and the matters connected therewith as certified to by the Bureau of Assessments of the City of Los Angeles, are set forth in the appendix hereto [pp. 1-18], and made a part hereof by reference.

(The original of said certified statement of facts of said Bureau of Assessments has been filed with the clerk of this court.)

The outstanding and significant facts of this certificate are:

The street proceeding was a terribly expensive one—right through the heart of Hollywood, California. Cost, $4,162,000. [App. p. 3, par. 2.]

It was just for acquiring land; no paving or other work was done thereby. [App. p. 2, par. 4.]

The assessment district paid virtually the whole bill—97% thereof; the City of Los Angeles, 3%. [App. p. 3, par. 2.]

That the assessment in nowise represents or was meant to represent supposed benefits, but solely the proportion of the total cost of the street proceeding which had to be borne by petitioner. [App. p. 3, last par., to p. 4, incl.]

That it was recognized at the time of making the assesment that the said assessment on petitioner was in excess of any supposed benefits to each and all of the parcels assessed. [App. p. 6, 4th par., to p. 7, 1st two pars., incl.]

That assessments were levied of $25.00 to $75.00 per front foot on purely residential property where no foreseeable benefit could result from being put on a widened heavy traffic artery, but only detriment could occur from this proceeding [App. p. 7, pars. 3-4]; also Schedule 3 [App. pp. 17-18].

That the major bases of expected benefits, to-wit: a continuance of the prosperous conditons of the Spring of 1929 [App. p. 5] and the development of Ivar avenue into a high-class business district [App. p. 5] were false assumptions which have not materialzed, as the community has remained light manufacturing. [Tr. 41.]

QUESTIONS PRESENTED.

Under these main circumstances the following specific questions arise:

1. Did the petitioner realize any taxable gain from the street proceeding?

2. Can this street proceeding, under these circumstances, be divided up into separate parts and the award be called one transaction, and the assessment another transaction; or is the award so dependent upon, and connected with, the assessment that the assessment is really a cost incident to getting the award, and to be so treated in determining whether petitioner derived any "gain."

3. Should Section 23(c)(3) be extended to the situation disclosed by the above facts so as to enable the Treasury to assume a fictitious gain on this award where none was in fact derived, and impose a tax on such assumption.

4. If an apparent profit was realized from this street proceeding, then was the payment of the assessment upon the remainder, by offsetting the award, such an acquisition of title to or interest in other property similar or related in service or use to the said part taken as justifies the application of the nonrecognizing provisions of Section 112(f) of the Revenue Act of 1928?

PREFACE TO ARGUMENT.

There is no question but that said assessment can be taken into consideration and deducted as a cost by the petitioner. The only question is whether the petitioner may take it into consideration *now* in connection with his award by reason of his having offset the award against the assessment, and by reason of the real nature of the assessment as primarily and chiefly *an expense incident to getting the award;* or must he wait until he sells the remainder? The United States Circuit Court of Appeals for the Second Circuit in two cases identical in facts and issues with the present one, held that this was the real question at issue, in the following language:

> "The question is only as to when the expenditure is to be brought into the reckoning, and could not arise if the original 'basis' were greater than the award. The taxpayer would then have nothing to pay, and the assessment would remain to swell whatever was left of the original 'basis,' when the property was sold."

Carrano v. Commissioner of Internal Revenue, 70 Fed. 2d, 319, 320 (and *Neville v. Commissioner,* companion case decided by stipulation of the parties and the order of the court to abide the event of the *Carrano* case).

ARGUMENT.

I.

Petitioner Derived No Gain From the Award Because Under the 1903 Street Act, and the Conduct of This Street Proceeding Thereunder, the Assessment Must Be Treated at the Present Time as an Expense Inseparably Connected With the Award, and the Award Cannot Be Considered as a Closed Transaction Separated From the Assessment; but the Whole Proceeding, Including the Assessment as Well as the Award, Must Be Treated as One Transaction; and Only the Net Result of the Whole Proceeding Should Be Considered in Determining Whether or Not Gain in the Constitutional Sense Has Been Derived.

It was stipulated, and the complaint condemning the parcels taken shows, that the whole of the said street proceeding was taken pursuant to and in conformity with the Street Opening Act of 1903.

(1) *The Street Opening Act of 1903, as interpreted and applied in practise, makes the assessment represent a proportionate part of the cost of the street proceeding irrespective of whether any supposed benefits are one-quarter or one-tenth of the assessment, and even where the supposed benefits are negligible or nonexistent; for said bureau's report certifies:*

> "That the assessments levied on the various parcels in said proceeding were determined, fixed and levied by said Bureau of Assessments, pursuant to the provisions of Section 16 of the Street Opening Act of 1903. Said Section 16 provides that the 'Superintendent of Streets (in this particular case the Bureau of Assessments) shall proceed to assess the total ex-

pense of the total improvement (less any allocation made by the City of Los Angeles) upon and against the lands, . . . *in proportion* to the benefits to be derived from said improvement. That the Bureau of Assessments has construed said section to mean that the expense shall be distributed *in proportion* to the respective benefits which it estimates the respective lots in the Assessment District receive from the improvement *without regard to the actual benefit* (except insofar as the actual benefit forms the basis upon which to fix the assessment by mathematical proportion)." [App. pp. 3, 4.]

The Bureau assessed petitioners said property without regard, except remotely, to any supposed benefit!

". . . the Bureau . . . in levying the assessment on the parcels assessed in said street proceeding (including those on Ivar avenue) did not determine or fix any of the amounts so assessed upon the theory or basis that the amount so assessed, either collectively or individually, represented what in its opinion was the amount of benefit which it estimated would accrue to the parcels assessed, but rather to the contrary the amounts so assessed were in excess of any possible benefit it could foresee likely to accrue to said parcels, either collectively or individually. . . .

"In other words, under this section an actual assessment may be one-half the estimated benefit, or it may be three, five or ten times the estimated benefit. The function and practice of this Bureau in connection with this project was not to determine and provide in said assessment that the amount assessed was equal to the actual benefit estimated, but merely to arrange an assessment so that the expense of said proceeding (as finally fixed by the court, plus the

expenses) was proportionately divided among the respective parcels according to the respective benefits, which by reason of the facts it was estimated would be enjoyed by the various parcels from said proceeding. In other words, if Parcel 152 were determined by the Bureau to have an estimated actual benefit of $200 from said proceeding and other parcels were estimated variously to have actual benefits of various sums which were fixed, and the total amount of estimated actual benefits accruing to these various parcels in the assessment district equal the sum of $1,040,000, this sum being roughly one-fourth of the $4,162,140.25 which had to be raised in said street proceeding, each parcel would have to bear an assessment of four times the estimated benefit." [App. p. 4.]

The law thus applied results thus: A street opening proceeding costs $100,000.00. The prescribed assessment district contains 5 parcels, which are estimated will receive from the opening the following benefits: Parcel (#1), $2000.00; parcel (#2), $3000.00; parcel (#3), $4000.00; parcel (#4), $5000.00; parcel (#5), $6000.00, making a total of $20,000.00 estimated, supposed benefits to all parcels in the assessment district. But this $20,000.00 estimated benefits is only 1/5th of total cost required to be raised. So to raise that amount, the assessment on each lot is stepped up 5 times, so that parcel #1 now is assessed 5 x $2000.00 estimated benefits or $10,000.00; parcel #2, 5 x $3000.00 estimated benefits or $15,000.00 and so on each amount is multiplied 5 times to reach the total cost. This is shown clearly by the following language from said report:

"Though the final amounts levied against the individual parcels, while in excess of the actual benefit to

accrue, nevertheless had to be placed against these parcels in order that they would total the grand total cost of the proposed improvement, less said allocation. In other words, the actual benefit assessment had to be stepped up proportionately and mathematically so that the total of the assessment so increased equaled the total cost which had to be raised by the assessment." [App. p. 7.]

(2) *Hence the said assessment as levied on said remainder of petitioner's property, as well as the other lands in the assessment district represents nothing but a proportionate cost of the said proceeding.*

The said Bureau of Assessment admits that the assessment on every parcel in the assessment district was in excess of any supposed benefits. We quote from the report:

"In levying the assessment . . . it was the opinion of the Bureau . . . that the amount actually assessed . . . including all those fronting on Ivar avenue, not only collectively exceeded the collective estimated actual benefit to accrue to those parcels from the street proceeding, but that in each individual case the assessment levied against the individual parcel was in excess of the actual benefit estimated to accrue to that parcel in said proceeding." [App. pp. 6, 7.]

Said report shows that assessments were levied in this proceeding, even though it was obvious to the Bureau that no appreciable benefit could result therefrom, nevertheless an assessment was made on the remainder.

The said report shows, in relation to the widening on Cahuenga, between Highland avenue and Dix street, that

the frontage was substantially residential property, which from common knowledge is injured by having a street widened and a race track of heavy traffic made of the street, which increases the hazards for children and pedestrians, makes their homes less attractive, which with the volume of noise, smoke and vibration accompanying a large volume of traffic unquestionably decreases the value of residence property. That nevertheless assessments of $25.00 to $75.00 per front foot was levied on this residential property. [App. p. 7, par. 3.]

> "That it was recognized that it was unlikely that there would be any appreciable change in the residential character of the improvements put upon said respective parcels on Cahuenga avenue between said streets, despite said widening of Cahuenga avenue by this proceeding, at least for a long time forward, for various reasons. . . ." [App. p. 7.]

The "Bureau" in levying the assessment on petitioner's said property, as well as on the other parcels in the same block with petitioner, anticipated that this block would by reason of this street proceding develop into a high class business section. We quote:

> ". . . and, particularly, in levying the assessment of Ivar avenue *it was anticipated* that Ivar avenue below Hollywood boulevard and down to Sunset boulevard, *would develop into a high-class business district.*" [App. p. 5.]

But it did not so develop!

The evidence, particularly the testimony of the petitioner, which was uncontradicted, shows to the contrary that no change in the character of the community surrounding his said property had occurred since said pro-

ceeding, and that it was then, and still is, a light manufacturing district. [R. 40-41.]

The said report further shows that the general economic basis, upon which the estimated benefits were predicated, turned out to be unsound.

First: The benefits were based upon the assumption of the continuance of the general conditions of prosperity prevailing in the Spring of 1929, which it now is common knowledge, is an unsound assumption, as these prosperous conditions have not continued in Hollywood or anywhere. These facts are shown by the Bureau's report, which states:

> "In estimating actual benefit believed by the Bureau likely to accrue to the respective parcels in the assessment district as a result of said street proceeding, and as a basis for fixing said proportionate assessment, many factors were considered and a long range view over a long period of time made of prospective benefits. Current general as well as local economic conditions existing in 1929 were among the factors considered by the Bureau in estimating said benefits and in fixing said respective assessments. General economic conditions were at high peak. Said benefits so estimated to accrue to said respective parcels from said proceeding were predicated to a large extent upon a substantial continuance of the prosperous conditions prevailing in the Spring of 1929." [App. p. 5.]

Second: One of the major bases of estimating the benefits to accrue to said Ivar avenue land owners (which includes petitioner) by reason of said proceeding was that Cahuenga avenue and the other streets leading into Cahuenga avenue, and forming the Five Finger Plan (with Cahuenga avenue forming the wrist of the hand and

Ivar avenue and other streets forming the fingers), would continue indefinitely to be the major artery for handling the traffic coming through the Cahuenga Pass from San Fernando Valley and going towards Hollywood and Los Angeles. The Bureau did not anticipate the prospective development of Highland avenue (another and perhaps more important and potential artery for sharing in the traffic coming down Cahuenga Pass from the San Fernando Valley), especially with the use of a large amount of state funds, into a secondary state highway.

Thus putting Highland avenue landowners in a better financial condition to develop a nearby competitive business district, which would substantially detract from the assumed development of Ivar avenue into a high class business district.

> "These factors were not considered at the time of levying the assessment on Ivar avenue and the aforesaid development of Highland avenue was in the formative stage, and there was no indication at that time that Highland avenue would be developed and widened, the state of California bearing one-third of the cost of acquiring the land for widening and paying all of the cost of paving with the resulting benefits to Highland avenue as a competitive business street." [App. p. 6.]

It is, therefore, evident from these facts that the major factors upon which the actual benefits were estimated turned out, by subsequent developments, to be unsound, so that even the actual benefits as supposed were, and now still are very uncertain, speculative and conjectural, and, in fact, may never be realized to any degree.

In conclusion on this point, it is obvious that with the actual benefits supposed to accrue, based upon faulty prem-

ises and the admission by the Bureau of Assessments that the actual benefits had to be stepped up to meet the cost of the proceeding, the whole of the assessment represents, at the present time at least, an expense and liability which was necessarily fastened upon the petitioner and others who received awards to pay for those awards, and hence a cost incident to getting the award.

Petitioner not only paid by way of assessment expense a sum equal to the award for the land taken, which is here construed by the respondent as a sale, but an amount actually more than twice the amount of his award for the land taken (after deducting the prorated cost of the previous investment, but ignoring the assessment).

The stipulation of facts [R. 30-33] shows that for the land itself (exclusive of severance damage and damage to building) petitioner received $23,549.00. That the prorated cost of the 20% of the whole was $4,200.00. He paid $1,000.00 attorneys' fees, which left him for the land taken $18,349.00, and his assessment expense was $38.713.60. Unless he paid that expense he would lose the remainder by sale under Sections 22 and 23 of the Street Opening Act of 1903. (App. Br. pp. 31, 32.) Under these circumstances, the assessment must be treated as an expense; or, as pointed out by appellant's brief the award and the assessment must be treated as part of *a transaction that is not yet closed, and which cannot be closed* until enough of the remainder is sold to equal the cost or basis, including said assessment of $38,713.60. *Common sense, which is more reliable than astute reasoning upon technicalities, must make it plain that no profit or gain was actually received by petitioner from said street proceeding,* and that the assessment must be taken into consideration in connection with the award.

Petitioner was not the only one who paid his own award. Schedule 1 of said report affords a comparison of the awards received for the opening and widening of Ivar street in this proceeding and the assessments levied upon the remainder. [App. pp. 9-12.] It shows that Ivar street land owners in the block in which petitioner's land was located, to-wit: between Selma avenue and Sunset boulevard, received for the land taken $217,209.00 and paid by way of assessment upon the remainder $188,-044.41; in other words, they paid, roughly, 86% of the amount received by them as awards for the land taken. [App. p. 8, pars. 4-5; p. 10.]

These facts go to show that, substantially, those receiving awards paid back most of what they got by way of assessment, which, as we have pointed out above, was without question an expense for a public proceeding and not by way of a benefit. Respondent argues in his brief (p. 13, lines 17-20), that those receiving awards who paid assessments were smaller in number than those who paid assessments and received no awards, but he failed to point out, as shown by the report of said Bureau, that while their number was smaller, they paid the far greater cost of this proceeding. [App. p. 3, par. 3.]

Said report also shows that it is not true that it was

> "a fortuitous circumstance that petitioner unlike many others was affected by both"

the award and the assessment, as claimed by respondent (Resp. Br. p. 14, lines 3-5), and upon which untruth respondent bases his argument that the award and assessment were separate transactions. For as a matter of fact, as shown by said report, all of the persons who belonged to the class with petitioner, *i. e.,* who received awards,

were assessed upon their remainders to pay for the awards. And there were 372 of this class who were so assessed. This is hardly an accident, a fortuitous circumstance, but the logical carrying out of the street proceeding under said Street Act of 1903 in apportioning the cost thereof over the assessment district which took in 372 persons in this proceeding who were identically situated with petitioner. There were 372 parcels of land, part of which was condemned and the balance of which was assessed to pay for the cost of acquiring the land. [See report, App. p. 3.] This is also borne out by Schedules 1 and 2 of said report, which show the amount of the award and the amount of the assessment levied against the remainder of the property belonging to said persons receiving awards. [App. pp. 9 to 16.]

Other provisions of 1903 Street Act, and this street proceeding strongly suggest that the award and assessment should not be considered as separate transactions:

(1) The award and the assessment depend upon, and are in pursuance of, the declarations of the Ordinance of Intention, notice and hearing thereon. Secs. 2, 3 and 4 [App. pp. 19-20.]

(2) The said Ordinance of Intention describes both the lands to be condemned and the assessment district, as required by Sec. 2 of said Act. (Complaint, pp. 21, 194.)

(3) A defect in the jurisdictional steps of the Ordinance of Intention and the hearing thereon are fatal to both condemnation proceeding and the assessment. Sec. 2 [App. p. 19.]

(4) The condemnation complaint must incorporate by reference the Ordinance of Intention with

a description of the assessment district. Sec. 7 [App. p. 21.]

(5) Should the assessment be set aside the condemnation proceeding must fail, for, as pointed out, Section 16 provides the only method for paying the awards; and in this proceeding only about 3% was available other than by assessment.

(6) Section 14 provides that even after the assessments have been levied and collected the city may abandon the whole proceeding irrespective of the entry of interlocutory judgment of condemnation. [App. p. 21.]

(7) Section 31 provides that the judgment does not become final nor the easement title to the land condemned vested in the city until *after the assessments have been levied and collected* and the money therefrom used to pay the awards and thereafter, upon proof of the payment of the awards, final judgment may be entered. (App. Br. p. 32.)

(8) The plan and scheme set up by the Act for determining benefits and levying assessments, is too loose, too informal and unscientific to warrant the conclusion that it was meant to be a genuine ascertainment in each case that the benefit truly equaled the assessment made on a particular parcel, for the plan and procedure shows merely a general procedure sufficient to support, from a constitutional standpoint, the levying of the assessment.

(9) Without some such orderly procedure, such as we have in condemnation cases giving the basis for the appraisal of damage, it is obviously impossible for the City Council to determine in each case whether the assessment is equaled by the supposed benefits. In fact no such attempt is ever made in practice.

The Council hears the protests against the assessment *en masse*, and unless there is some great outstanding discrepancy relatively between the assessment objected to and other assessments, the assessment is confirmed. The Council does not go into the question of how much increase in income or in value would actually accrue to a parcel assessed and into the *minutiae* of the basis for it.

(10) Furthermore, no practicable appeal to the courts is available, for, by Section 19 of the Act the approval by the City Council of the assessment is final and conclusive in the absence of fraud, or conduct on the part of the City Council amounting to fraud. [App. p. 22.]

Further, the whole of said Act read together exhibits clearly a single scheme and plan of acquiring land for "public interest or convenience" (Section 1 of said Act), [App. p. 20] and the paying of the cost thereof by levying the same on the assessment district, except insofar as good fortune, good politics and the financial condition of the city enables the assessment district to get the public to bear part of this street opening or widening; in this case it was very poor for only 3% was contributed by the city on a four million dollar project for public interest and convenience,—almost confiscation—and now the respondent would tax them on top of it on the basis of some supposed gain. After the payment of the burden of this street widening this is almost "insult upon injury," and certainly an attempt at a great moral wrong without justification in the facts, and an attempt which should no more be encouraged here against California citizens than it was in Hartford, Connecticut where the Second Circuit Court of Appeals refused to be a party to such a

proceeding in a situation far less grevious than the one before this court.

(4) The fourth point under our Proposition I is *that the award,* because of said language of said Street Act and said street proceeding thereunder, *cannot be considered as a closed transaction separated from the assessment.* Inasmuch as appellant in his brief has discussed at length cases showing various circumstances wherein the court held the transaction could not be considered a closed one, and pointed out in his brief some of the facts which go to show that this award cannot be considered a closed transaction separated from the assessment, it is not necessary to review here said cases or the facts regarding this not being a closed transaction, but merely to point out that many additional facts are called to the attention of the court by this brief which go to show why the award cannot be considered a closed transaction independently of the assessment. These facts include all the matters heretofore discussed, the interpretation and application of the language of said Section 16 to this street proceeding and to petitioner's remainder by the said Bureau of Assessments in levying an assessment upon said remainder, known by them to be in excess of any supposed benefit; the fact that the assessment was based upon unsound factors and the detail of the other provisions of said Street Act which indicate that the whole of said street proceeding thereunder must logically be viewed as one proceeding. All of these facts, and others, are pertinent to the question of whether the award can now be considered a closed transaction independently of the assessment.

(5) Our fifth point involved in proposition I is the question of whether under the peculiar circumstances

of this street proceeding, its language and conduct, the manner in which the assessment was levied and the basis upon which it was made up, there was any gain, at the present time, in the constitutional sense.

"Income" has been defined by the Supreme Court as "gain." (*Eisner v. Macomber,* 252 U. S. 182, 207, 64 L. Ed. 521.)

It is evident there was no gain from the street proceeding. Petitioner lost thereby. For land taken he received $23,000.00, less cost and attorney's fees. He paid $38,-713.60 assessment. How did he "gain"?

Further, the "Bureau's" report shows clearly the assessment was a proportionate expense to pay the award. Hence petitoner's said assessment must be treated now as an expense forced on the land owner to enable the City to pay the awards, and thus the basis of the remainder reduced for future computation of profit on the sale of the remainder, after petitoner has recouped his investment of $75,000.00 in buildings, plus the land and plus the assessments then levied, and since then levied, and any additional investment and less the award.

The Government has failed to bear the affirmative of the issue to show that the assessment was not an expense or liability incident to getting the award. This the respondent must do. The Circuit Court of Appeals in an identical case so held in the following language:

> "The Treasury, like any other party who has the affirmative, loses, when the answer is in balance. The doctrine applicable is somewhat akin to the canon of statutory construction which takes all doubts in the taxpayer's favor. Crooks v. Harrelson, 282 U. S. 55, 61, 51 S. Ct. 49, 75 L. Ed. 156."

The court saying further:

> "In this instance the 'gain' in dispute could arise only on the hypothesis that so much of the award as paid the assessment was received before the assessment itself was paid. This was demonstrably not the case; it was received at the same time. Thus it does not affirmatively appear to be a taxable 'gain' at all, and the taxpayer wins. Moreover, this is the direct and natural way to look at the transaction. The taxpayer has 'gained' only what he has received above his cost; so far as his award has been cancelled by the assessment, it is not a 'gain' at all, it is instantly absorbed by a new cost which arises and is paid without allowing him even a momentary possession of the 'gain.'" (Order reversed—deficiency expunged.)
>
> *Carrano v. Commissioner,* 70 Fed. (2d) 319 at p. 321, col. 1, lines 37 to end of page.

As indicated by the above quotation from the case of Carrano v. Commissioner, the Circuit Court of Appeals for the Second Circuit, flatly and squarely held in a case identical in the material facts with the one before this Court on this appeal that the assessment must be deducted from the award before computing any supposed gain.

A companion case, that of *Neville v. Commissioner,* consolidated at the trial before the Board of Tax Appeals was by stipulation and order of the court to abide the event of the *Carrano* case. [Record *Carrano* case filed herewith, pp. 66, 67.] In the two cases of *Carrano v. Commissioner* and *Neville v. Commissioner,* no appeal was taken from the decision against the respondent, and that decision has become final. It may, therefore, be fairly assumed that respondent admits the correctness of the

decision in the *Carrano* case upon the facts there. Those facts were, briefly, that Carrano and Neville both received awards for land taken. Carrano received damages to two parcels, of respectively, $40,304.12 and $38,364.92, and was assessed on the said parcels, respectively, $8,928.00 and $8,116.50. (Transcript of Record in the said *Carrano* case, p. 47.) Carrano on appeal contended that the assessments should be deducted from the said awards before computing any gain. (See said Transcript of Record, p. 37); also memorandum of opinion therein, page 44, second paragraph, where the Board of Tax Appeals says:

> "The issue in each proceeding, as stipulated by the parties, is whether certain benefits to property 'assessed by the City of Hartford should be deducted from the award of damages made by said city, in determining whether the petitioner received an amount in excess of the cost of the property and thereby realized a taxable gain from the condemnation of his real estate, or whether the gross amount only of the award made by the said city should be considered in determining whether or not a taxable gain was realized.' "

The facts in the *Neville* case were similar [R., *Carrano* case, 44, 45, 46, 47.] Upon those facts the Circuit Court of Appeals said assessments must be considered with the award and deducted therefrom.

(c) Despite the fact that the Government knew it had this case and other cases involving the same question of deducting the assessment levied on the remainder from the award before arriving at any "gain" or income, the Government was willing to abide by the reasoning and decision in the *Carrano* and *Neville* cases, without asking for re-

hearing or appeal to the Supreme Court. *This action may fairly be construed as an admission of the correctness of the decision and of the reasoning of the court in the Carrano case that when the assessment is paid by offsetting the award, only the balance, if any, can be used in determining "gain."*

(d) Respondent's attempts to distinguish the *Carrano* and *Neville* cases from this one on the two following grounds:

(1) Respondent says that in this case now before this court the petitioner had the option to offset or not to offset the award against the assessment, whereas in the *Carrano* and *Neville* cases he was obliged to offset award against assessment; hence he implies, in the *Carrano* case the taxpayer didn't get that part of the award offset against the assessment by direction of the Court of Common Counsel of the city of Harford. But respondent ignores two things in attempting to say Carrano shouldn't be treated as having gotten this part of the award offset against the assessment: First, that the Circuit Court of Appeals in deciding the *Carrano* case expressly held with the Commissioner and the Board of Tax Appeals that the whole award is to be considered as received by the taxpayer. The Circuit Court says (70 F. (2d) p. 321, col. 1, lines 3-14):

> "We are disposed to go along with the Board in holding that the whole award is to be considered as received by the taxpayer, that part of it not received in cash having been used to pay a lawful liability, the assessment." (Citing Old Colony Trust Co. v. Commissioner, 279 U. S. 716, 729, 731; U. S. v. Boston and Maine R. R. Co., 279 U. S. 732; U. S. v. Mahoning Coal R. R. Co., 51 F. (2d) 208.)

The transcript and the briefs in the *Carrano* case filed herewith further show that the city charter provisions of the city of Hartford, under which the street proceeding was carried on and the award and assessment made, declare that the offset shall be deemed a payment. [Tr. p. 50, Resp. Br. pp. 67, 16.]

Furthermore, the respondent in the *Carrano* case in its brief expressly urged that the Board of Tax Appeals and the Circuit Court consider that Carrano and Neville had received payment of the amount of the award which was offset against the assessment, by the express order of the Court of Common Counsel, in accordance with said city charter provisions. (Pages 6, 7, 10, of Resp. Br. therein.)

And in accordance with the respondent's contention, the Circuit Court, as cited above, agreed with the respondent and the Board that the petitioner had received that part of the award which was offset.

Now it appears in this case, before the court here, that the respondent intimates that in the *Carrano* case (despite the city charter provisions, despite the respondent's contention therein and the holding of the Board of Tax Appeals and Circuit Court, that the amount offset against the assessment was tantamount to payment to the petitioner) that Carrano did not in fact receive payment and that this case is to be distinguished from the *Carrano* case because Wolf could have received payment. It appears that the respondent not only fails to recognize that both the Board of Tax Appeals and the Circuit Court held that the offset was tantamount to payment, but wants to go back on its argument in the *Carrano* case, which was that the offset was tantamount to payment of the award to Carrano.

Hence *Carrano* case cannot be distinguished from this case on the ground that the court in deciding the *Carrano-Neville* cases did so on the basis that the taxpayer did not receive that amount of the award which was offset by order of the City Council, whereas in this case the taxpayer, under the California statute, had the election to collect the full amount of the award and permit a lien liability which would subject the remainder of his property to sale to fasten itself to this remainder because both courts held the offset was payment to Carrano.

The second asserted ground of distinction between this case and the *Carrano* case is that "there was no separation of the awards for value of land taken and for severance damage."

The question of severance damages was ignored by both the Board of Tax Appeals and the Circuit Court in their decisions. Both based their decisions squarely upon the question of whether or not, ignoring the question of severance, the assessment could properly be deducted from the award. This applies equally to the case of *Neville v. Commissioner,* consolidated and decided at the same time. The final stipulation of the parties in submitting the matter to the Board of Tax Appeals ignores the question of any severance damage. [See Tr. of R. p. 35, last two lines, p. 36, first two lines; p. 37, par. 10.]

The memorandum opinion of the Board of Tax Appeals of the above-mentioned Carrano-Neville transcript [p. 44, last par.; p. 45, first and second par.], shows the question of severance was not an issue. We quote therefrom:

> "The issue in each proceeding, as stipulated by the parties, is whether certain benefits to property 'assessed by the City of Hartford should be deducted

from the award of damages made by said city, in determining whether the petitioner received an amount in excess of the cost of the property and thereby realized a taxable gain from the condemnation of his real estate, or whether the gross amount only of the award made by the said city should be considered in determining whether or not a taxable gain was realized.'

Again, is respondent not estopped from now claiming that the award to Carrano for severance and for land taken were not separated when he so represented in his amended answer to the Board of Tax Appeals, filed shortly before the trial, when presumably respondent had had full opportunity for complete investigation? We quote from paragraph II, subdivision (d) of the amendment to his answer:

"(d) As a result of the widening and improving of Main street by the city of Hartford, the amounts of $31,376.12 and $30,348.42 were paid to petitioner during the year 1928, which were made up of the following items:

1092-1094 Main Street.

Land taken	$ 6,400.00
Buildings taken	5,081.67
Alterations to building allowance	8,695.00
Severance damages	13,650.00
Loss of rent	6,316.00
Curb and walk damage	161.45
	$40,304.12

1100-1102 Main Street.

Land	$ 6,688.00
Buildings	4,249.83
Alterations to building	4,998.37
Severance damages	17,128.00
Loss of rent	5,138.00
Curb and sidewalk damage	162.72
	$38,364.92"

If these items were not separated, as respondent alleged, why were they so represented to the court, and from where did respondent get thm? The mere fact that the parties later in their stipulation of facts may have decided to ignore the items making up the total award, as not presenting a worthwhile issue, does not alter the fact that they were so alleged, and presumably correctly, by respondent.

The Circuit Court of Appeals in deciding these two consolidated cases (*Carrano v. Commissioner,* 70 F. (2d) 319), flatly decided the case upon the basis of the right of the taxpayer to deduct the assessment from the award. The court nowhere in that decision intimates in any way that it is considering the absence of any figures or any evidence of the existence or nonexistence of severance damage or amount thereof as in any way influencing its decision. It places its decision squarely and solely upon the ground that

> "Although the assessment was not an added cost until paid, it became cost at the moment when it was set off against the award. Receipt and payment were simultaneous; it is as false to say the award was paid before it was expended, as that it was expended before it was paid."

70 F. (2nd) page 321, lines 16-23; also page 321, line 43:

> " 'In this instance the "gain" in dispute could arise only on the hypothesis that so much of the award as paid the assessment was received before the assessment itself was paid. This was demonstrably not the case; it was received at the same time. Thus it does not affirmatively appear to be taxable "gain" at all, and the taxpayer wins. Moreover this is the direct and natural way to look at the transaction. The taxpayer has "gained" only what he has received above his costs; so far as his award has been cancelled by the assessment, it was not a "gain" at all, it is instantly absorbed by a new cost which arises and is paid without allowing him even a momentary possession of the "gain." Order reversed. Deficiency expunged.' "

The issue is further made clear by the court's quotation of the taxpayer's contention, 70 F. (2d) 320, column 2, lines 20-28:

> "The taxpayer argues that the assessment should be either deducted from the award on the ground that he never received more than the difference as added to the 'basis' as of March 1, 1913, on the ground that it had become part of the cost of the property when the award was paid. The result is the same by either method."

Again, same page, last paragraph, the court says:

> "The question is only as to when the expenditure is to be brought into the reckoning, and could not arise if the original 'basis' were greater than the award. The taxpayer would then have nothing to pay, and the assessment would remain to swell what-

ever was left of the original 'basis' when the property was sold. But here the award was greater than the 'basis,' even after the assessment was added; and if it is not deducted, the *present 'gain' is greater* and the *future 'gain,' if there is one, will be less.*" (Italics ours.)

II.

Petitioner Derived No Gain From the Award, Because Petitioner Exercised His Legal Right to Offset the Award Against the Assessment and Therefore in Fact as Well as in Contemplation of the Income Tax Amendment He Actually Received No Gain.

Section 21 of the Street Opening Act of 1903 provides that

> "the owner of any property assessed, who is entitled to compensation under the award made by the interlocutory judgment, may, at any time after such assessment becomes payable, and before the sale of said property for nonpayment thereof, as hereinafter provided, *demand* of the street superintendent that such assessment, or any number of such assessments, be offset against the amount to which he is entitled under said judgment. Thereupon, if said amount is equal to or greater than such assessment, including any penalties and costs due thereon, the assessments shall be marked 'Paid by Offset'; and if the said amount is less than the assessment and any penalties and costs due thereon, the person demanding such offset shall at the same time pay the difference to the street superintendent in money, and the assessment shall, on such payment, be marked paid, the entries showing what part thereof is paid by offsetting and what part in money."

The application of such award to the assessment on the remainder is tantamount to a *pro tanto* reduction of the award, to the extent to which it is offset, and no gain can be predicated upon any award except what is left over, if any there be, not needed to pay the assessment. It was stipulated in this case that the petitioner applied all of his award, including not only that for the land taken but also that received for severance damages to the remainder and for damages to buildings upon the assessment, and in addition thereto paid the balance in cash. [R. 30-33, Stipulation of Facts, par. 7.]

III.

The Provisions of Section 23 (c) (3) of the Revenue Act of 1928, Asserted to Require Deferring Deduction of the Assessment Until the Remainder Is Sold, Have No Application and Do Not Control the Assessment Here Made to Pay the Award.

These provisions are obviously meant to apply solely to a situation where there was only an assessment to be considered and not to a compound situation like we have here where an award is given and at the same instant, or before the award is paid, an assessment is levied upon the remainder to pay the award and the assessment, as in this case, is in an amount more than twice the amount of the award for the land taken, (less the attorneys' fees and *pro rata* cost of the part taken).

Where there is no problem of taxing such an award, it is proper for Congress to prescribe that the assessment shall not be deducted as a current expense in that year but left to abide a sale, when it may be determined whether or not part of the assessment may represent some benefit which can and will be determined by the sale price. This is a reasonable regulation of Congress applied to that situation. It should be interpreted to apply solely to that kind of a problem, and that class of persons.

Here, we say with regard to the award, just what the spirit of this section says with regard to the assessment. There is no certainty that the assessment represents any benefit, and if it was made to pay the award then the calculation of the profit on the award should be left to abide the event of the sale of the remainder. This section need not and should not be construed as an attempt to create a profit by ignoring a natural expense and liability incident to the award. To do so would result in a gross injustice. Further it is a "canon of statutory construction" that "all doubts are taken in the taxpayer's favor." (*Carrano v. Commissioner,* 70 Fed. (2nd) 319, 321. Citing *Brook v. Harrelson,* 282 U. S. 55, 61; 51 S. Ct. 49; 75 L. Ed. 156.) Whatever profit, if any, in the award, will surely be ascertained and taxed by respondent when the remainder is sold. Meanwhile if there comes any benefit from the improvement it will be reflected in petitioner's annual income which respondent can tax.

IV.

If Any Profit May Be Deemed to Have Been Realized on This Award, Then the Payment of the Assessment Upon the Remainder by Offsetting the Award Amounts to an Acquisition of a Paramount Title and Interest in the Remainder, and the Remainder Being a Part and Parcel of the Same Land From Which the Part Condemned Was Taken, the Two, the Part Taken and the Remainder, Are Obviously Not Only Similar or Related in Service or Use, but Are Identical in Service and Use, and Therefore Within the Provisions of Section 112(f) of the Revenue Act of 1928 Which Prescribe That Gain Under Those Circumstances Shall Not Be Recognized.

Section 112 (f) relating to the acquisition of property similar or related in service or use, must obviously mean the acquisition to *some* title to *or interest* in property. Rarely does a person own the fee simple title including all legal and equitable interest therein. The moment he buys property he faces taxation, which becomes an equitable lien which may ripen into legal title. He may purchase a property subject to a mortgage. He may purchase it on the installment plan, in which case the seller reserves the legal title until certain conditions have been complied with; so, likewise, he may purchase an equitable interest in a property which may ripen into a title, or he may cancel an interest in a property, and if that property is similar or related in service or use to the part which was condemned, and for which he received money with which he bought this equitable title, it would appear clearly to bring the situation within the purview of section 112 (f), providing that "no gain shall be recognized" where the

proceeds of the involuntary conversion are expended in the "aquisition of other property similar or related in service or use to the property involuntarily converted (condemned)."

In this case petitioner took the money he got from his award for the land that was taken and used it to pay off an equitable lien, to-wit, the assessment upon the remainder. *It is obvious that the two properties, the one taken,* (the one for which the award was given) *and the remainder on which the assessment was levied were identical in service and use, for before the condemnation they formed one property. The only question remaining then is: Was the acquisition of the interest,* to-wit, the payment and cancellation of the assessment, an acquisition of property within the meaning of section 112 (f)? Counsel contends that the payment of the assessment was certainly an acquisition of property within the spirit and intent and meaning of section 112 (f) of the Revenue Act of 1928. If petitioner had not paid off the assessment his remainder would have been sold for the delinquent assessment and the equitable title of the city pursuant to section 28 of said Street Act of 1903, would have ripened into a legal title and he would have lost the remainder.

As a matter of fact, the respondent has previously held that this said section 112 (f) permitted the acquisition of an equitable interest in real property, and counsel contends that its interpretation then may be construed as an admission of the correctness of the reasoning and practical interpretation of that section.

The following letter, the original of which is being filed with this court, shows such interpretation of that section:

"Treasury Department
Washington

March 7, 1930.

Received
Mar 8 1930

Received
Mar 11 1930
Miller, Chevalier, Peeler & Wilson
(Seal)
Office of

Commissioner of Internal Revenue

Address Reply to
Commissioner of Internal Revenue
and Refer to

IT:E:RR
LAP

Miller and Chevalier,
Southern Building,
Fifteenth and H Streets, N. W.,
Washington, D. C.

Sirs:

Reference is made to the case of *Mrs. Ida B. McInnes,* 1547 Sierra Bonita Avenue, Los Angeles, California, which was presented by your Los Angeles office. Request is made, however, that reply be made to your office and a power of attorney has accordingly been submitted. *The question at issue is the application of Section 112(f) of the Revenue Act of 1928 to the transaction hereinafter described.*

It appears that Mrs. Ida B. McInnes owned a parcel of real estate embracing Lots 19 and 21 in the City of Los Angeles, located at the corner of Santa Monica Boulevard and Virgil Street on which were located three buildings. One of the buildings was a two-story hollow tile building covered with plaster which was occupied by a store below and two apartments above. The center building was a one-story frame store building covered by stucco in the front. The third building was a two-story building which was occupied by three stores below and two apartments above. It is stated that the property had cost the taxpayer originally about $32,000.00. There have been, however, several street assessments against the property since she purchased it which have brought the cost considerably above $32,000.00.

About May 1, 1929 the City of Los Angeles widened Virgil Street and by condemnation proceedings took approximately all of Lot 21. In consideration for that lot the city paid Mrs. McInnes $42,009.00 and $2,280.00 as severance damages with respect to Lot 19, making a total award of $44,289.00. Inasmuch as there was a mortgage of $9,154.00, including accrued interest, against the property, the city applied that amount of the award to the satisfaction of the mortgage lien. Mrs. McInnes received a check for the balance of $35,135.00.

In addition to the above-mentioned property the taxpayer owned another tract consisting of three improved lots, numbers 22, 23 and 24, located at the corner of Sunset Boulevard and Mariposa Street. According to the diagram submitted there are eight buildings located on the three lots. One is a two-story frame and stucco building containing four flats. On the same lot there are two bungalows used for

business purposes and two bungalows rented as dwellings. Three other bungalows are located on the other two lots and all appear to be rented as dwellings. On Lots 23 and 24 there was a mortgage of $30,000.00 and on Lot 22 there was a mortgage of $4,000.00.

"Mrs. McInnes used the money awarded her from the first herein described property which was taken by condemnation proceedings in paying off the above-mentioned mortgages on Lots 22, 23 and 24. The $30,000.00 mortgage with accrued interest amounted to $30,617.36 and the $4,000.00 mortgage with accrued interest amounted to $4,024.89. These two items plus the $9,154.00 applied by the city against the mortgage on the property taken by it makes a total of $43,796.25 used by Mrs. McInnes in paying off indebtedness on the property converted or that similar thereto.

"Request is made as to whether the transaction is governed by the provisions of section 112 (f) of the Revenue Act of 1928.

"In reply you are advised that it is the opinion of this office that the property designated as Lots 22, 23 and 24 is similar property and is related in its service and use to the property converted. Both are real properties improved with business and residential buildings which are used for income-producing purposes by reason of their rental.

"It is therefore held that *the application of the money received by the taxpayer as an award* for the involuntary conversion of her equity in the portion of the Virgil Street property taken by the city *for the acquisition of a greater equity in similar property comes within the purview of section 112 (f) of the Revenue Act of 1928.* No gain or loss was sustained

by the taxpayer in 1929. *Any excess of the total award of $44,298.00 over the amount applied by the city to the liquidation of the mortgage on the property condemned and the amount expended by the taxpayer in liquidating the indebtedness on Lots 22, 23 and 24 should be regarded as reducing the cost or other basis of the remainder of the Virgil Street property to be used for determining the gain or loss arising upon upon subsequent disposition of the property.*

"In any further communication relative to this matter, reference should be made to the symbols IT:E:RR-LAP.

Respectfully,

DAVID BURNET,
Deputy Commissioner.

By L. K. SUNDERLIN
Chief of Section."

CONCLUSION.

The facts of this case and the law induce the following conclusions:

1. That the entire street proceeding as it affected petitioner, including award and assessment, must be treated as one transaction, and only the net result considered in determining the existence of any gain.

2. That the assessment was primarily, presumptively and by an overwhelming mass of evidence, and without contradiction, a liability and, on payment, an expense incident to, and inseparably connected with, payment of the award, and hence must be treated as such expense and

deducted from the award in determining what petitioner actually received, out of said proceeding.

3. That the award cannot be considered a closed transaction unless the assessment be first deducted.

4. That petitioner expended the entire award in the acquisition of other property similar or related in service or use, in paying off the lien upon the remainder, and hence comes within the spirit and meaning of section 112 (f) of the Revenue Act of 1928.

5. That respondent has failed to show petitioner derived any gain from said award, in the sense intended by Article XVI of the United States Constitution.

6. That in fact no such gain was derived.

7. That the order of the Board of Tax Appeals should be reversed.

Respectfully submitted,

GREGORY M. CREUTZ,

Attorney for Amici Curiae.

APPENDIX.

[Herewith follows copy of letter filed with this court]:

[Crest of City of Los Angeles]

MIchigan 5211

C. K. STEELE
Director

BOARD OF PUBLIC WORKS
City of Los Angeles
Office of the
BUREAU OF ASSESSMENTS
Room 11, City Hall

Library Park
Playground
Street
Opening Widening
And Lighting
Assessments
Sanitary Sewer
Storm Drain
Street
And Special
Improvement
Assessments

"Address All Communications to Bureau of Assessments"

Los Angeles, Calif.

TO WHOM IT MAY CONCERN:

The Bureau of Assessments of the City of Los Angeles does hereby certify to the following facts:

That said Bureau of Assessments of the City of Los Angeles, hereinafter referred to as "the Bureau of Assessments," had charge of making up the assessment which was finally adopted by the City Council of the City of Los Angeles as the assessment levied in connection with that certain street proceeding popularly known as "The Five Finger Plan" and described by Ordinance of Intention of the City of Los Angeles No. 53214, and with the incidental work of estimating the supposed benefits estimated to accrue to the several parcels in the proceeding, and upon that basis proportioning the cost of said proceeding among the several parcels in the assessment district;

That the undersigned, Laurence J. Thompson, is now, and for more than ten years last past has been employed in said Bureau of Assessments; that he is now and was at the time of the making of the assessments levied on the parcels in said Five Finger Plan, Chief of the Opening and Widening Division of the said Bureau of Assessments, and as such his duties during that time have been to have immediate charge of the work of distributing proportionately the costs of street proceedings among the several parcels in the assessment districts covered by said street proceedings, and that he was in immediate charge of such work, and actually handled

the work of proportioning the cost of said street proceeding mentioned above as the Five Finger Plan, and is, and was at the time of the making of assessments therein, fully familiar with all the details of the work connected with making said assessments on the several parcels included in the assessment district of said proceeding, and with the manner in which, and the factors which were considered in arriving at the several assessments on the several parcels in said assessment district;

That he is now, and was at the time of making said assessment on said street proceeding, fully familiar with all proceedings which were carried out under or pursuant to said Ordinance of Intention No. 53214, said ordinance ordering said work, No. 54065, and with the amount of the awards which were decreed in said Superior Court case No. 202550, brought pursuant to and in conformity with said Ordinance of Intention No. 53214, and with the items making up the individual awards, to-wit, the award for land taken, for damage to buildings, if any, and for severance, if any.

That jurisdiction to proceed with said street proceeding and every part thereof was acquired under and by virtue of said Ordinance of Intention No. 53214, the notice of the hearing thereon and the hearing held pursuant to said ordinance and said notice.

That no part of said street proceeding known as the Five Finger Plan, and hereinafter referred to simply as "said street proceeding," involved any paving or any other work done to the streets involved in said proceeding; that the whole of said street proceeding involved merely the acquisition of the land necessary to open and widen Ivar Avenue, Cahuenga Avenue, and other streets, all of which are located in Hollywood, California.

That the hereinafter data, facts and figures are exact and true copies of the records of the Bureau of Assessments in connection with said street proceeding, and said records of said Bureau are now, at the time of making this certificate, in the possession and under the control of the undersigned, Laurence J. Thompson. That said records show the following facts in connection with said street proceeding and the assessments levied in connection therewith to pay the cost of said street proceeding:

The photostatic copies of three maps attached hereto and made a part hereof are true photostatic copies of three portions of said street proceeding and indicate: (1) and (2) opening and widening of Ivar Avenue in said street proceeding, and (3) opening and

widening of a portion of Cahuenga Avenue in said street proceeding; that each said map shows the part acquired in said street proceeding with the number of the parcel corresponding to the parcel number set forth in the complaint and in the judgment in said Superior Court case No. 202550; that said maps show also the assessment numbers of the parcels assessed to pay the cost of said street proceeding.

That the total award for land taken in said street proceeding, as shown by the judgment in said case No. 202550, was $4,044,-961.05; that the assessment district paid $4,013,432.25; that the incidental expenses of said proceeding, details of which are set forth in footnote to Schedule 2 attached hereto, were $117,179.20; that the City of Los Angeles allocated out of public funds $148,-707.00, or approximately 3% of the total cost of said proceeding; that the balance of said cost, to-wit, approximately 97% thereof, was paid by the assessment district.

That, while those who received awards and paid assessments upon the remainder of the land, part of which was taken in said proceeding, constituted a smaller number than those who were assessed but received no awards, yet the smaller number receiving awards paid by far the greater share of the cost of said proceeding. The persons receiving awards and having an assessment levied upon the remainder of the land, part of which was taken in said proceeding, and for which said awards were made numbered 372. The details of said assessments against those receiving awards are shown in Schedules 1 and 3 annexed hereto and made a part hereof.

That the assessments levied on the various parcels in said proceeding were determined, fixed and levied by said Bureau of Assessments, pursuant to the provisions of section 16 of the Street Opening Act of 1903. Said section 16 provides that the "Superintendent of Streets (in this particular case the Bureau of Assessments) shall proceed to assess the total expense of the total improvement (less any allocation made by the City of Los Angeles) upon and against the lands, * * * *in proportion* to the benefits to be derived from said improvement. That the Bureau of Assessments has construed said section to mean that the expense shall be distributed *in proportion* to the respective benefits which it estimates the respective lots in the Assessment District receive from the improvement *without regard to the actual benefit* (except inso-

far as the actual benefit forms the basis upon which to fix the assessment by mathematical proportion).

Under section 16 of the Street Opening Act of 1903 the Bureau of Assessments of the City of Los Angeles, in levying the assessment on the parcels assessed in said street proceeding (including those on Ivar Avenue) did not determine or fix any of the amounts so assessed upon the theory or basis that the amount so assessed, either collectively or individually, represented what in its opinion was the amount of benefit which it estimated would accrue to the parcels assessed, but rather to the contrary the amounts so assessed were in excess of any possible benefit it could foresee likely to accrue to said parcels, either collectively or individually. The reason for this is that the peculiar language of section 16 of said "Act" requires the Bureau to spread said whole cost upon the assessment district fixed in the Ordinance of Intention, regardless of the actual benefit. The only thing which the Bureau observed in making the assessment was to distribute said cost in proportion to the benefit which each parcel was thought likely to enjoy from the street proceeding.

In other words, under this section an actual assessment may be one-half of the estimated benefit, or it may be three, five or ten times the estimated benefit. The function and practice of this Bureau in connection with this project was not to determine and provide in said assessment that the amount assessed was equal to the actual benefit estimated, but merely to arrange an assessment so that the expense of said proceeding (as finally fixed by the court, plus the expenses) was proportionately divided among the respective parcels according to the respective benefits, which by reason of the facts it was estimated would be enjoyed by the various parcels from said proceeding. In other words, if Parcel 152 were determined by the Bureau to have an estimated actual benefit of $200 from said proceeding and other parcels were estimated variously to have actual benefits of various sums which were fixed, and the total amount of estimated actual benefits accruing to these various parcels in the assessment district equalled the sum of $1,040,000, this sum being roughly one-fourth of the $4,162,140.25 which had to be raised in said street proceeding, each parcel would have to bear an assessment of four times the estimated benefit.

Furthermore under the 1903 Street Opening Act as it stood at the time of this assessment there was no provision of law whereby the allocation made by the City in the original ordinance

of intention of $148,708.00 could be raised to supply the difference between any estimated actual benefit and the assessment which had to be levied to bear the actual cost of $4,162,140.25. Unless the precise sum were allocated in the Ordinance of Intention, the City Council lost jurisdiction to increase it later, no matter how much the total assessment exceeded the total benefit.

Said Street Opening Act of 1903 was amended after said assessments were levied as to permit the legislative body, such as the City Council, to increase the allocation, *so as to make up by public funds,* as far as possible, the *difference between the actual benefit and the expense that had to be levied upon the property,* regardless of how far the assessment exceeded the actual benefit.

In estimating actual benefit believed by the Bureau likely to accrue to the respective parcels in the assessment district as a result of said street proceeding, and as a basis for fixing said proportionate assessment, many factors were considered and a long range view over a long period of time made of prospective benefits. Current general as well as local economic conditions existing in 1929 were among the factors considered by the Bureau in estimating said benefits and in fixing said respective assessments. General economic conditions were at high peak. *Said benefits so estimated to accrue to said respective parcels from said proceeding were predicated to a large extent upon a substantial continuance of the prosperous conditions prevailing in the spring of 1929.* Another factor of special importance considered in estimating said benefits was the character of the neighborhood and its likelihood to develop and increase in its income-bearing possibilities, including the possibility of an increase in business uses of the parcels assessed; *and, particularly, in levying the assessment of Ivar Avenue, it was anticipated that Ivar Avenue,* below Hollywood Boulevard and down to Sunset Boulevard, *would develop into a high-class business district.* It was further considered, in the supposed development of Ivar Avenue, that Ivar Avenue (along with other streets in the Five Finger Plan) was part of the outlet from San Fernando Valley as it comes through Cahuenga Pass, and that Cahuenga

Avenue being widened by said proceeding up to the entrance of Cahuenga Pass at Highland Avenue, and that Cahuenga Avenue as widened would provide a logical outlet from the San Fernando Valley for traffic moving through Cahuenga Pass, down to Hollywood Boulevard and on to Los Angeles, and that Ivar Avenue would share in the business development arising from this traffic moving chiefly down Cahuenga Avenue.

The benefits estimated to accrue to Ivar Avenue landowners and other street in the Five Finger Plan in this street proceeding did not take into consideration the development of Highland Avenue into a secondary state highway from Cahuenga Pass to Santa Monica Boulevard and a consequent probable diversion into Highland Avenue of considerable traffic from Cahuenga Avenue and Ivar Avenue, and other streets which form part of the Five Finger Plan leading into Cahuenga Avenue. Nor was consideration given at that time to the fact that the development as a secondary highway of Highland Avenue largely at public expense might put the owners of property fronting on Highland Avenue in a position to finance the development of a high-class business section on Highland Avenue if a large part of the expense of the widening and paving of Highland Avenue were carried on at public expense, thus putting such owners of said frontage in a better financial condition to develop the property in keeping with the new development. Nor was consideration given to the fact that the development of Highland Avnue into such secondary highway and the development by the owners of their frontage on Highland Avenue, as aforesaid, might detract substantially from development of a high-class business section along Ivar Avenue and other streets in the Five Finger Plan.

These factors were not considered at the time of levying the assessment on Ivar Avenue and the aforesaid development of Highland Avenue was in the formative stage, and there was no indication at that time that Highland Avenue would be developed and widened the State of California bearing one-third of the cost of acquiring the land for widening and paying all of the cost of paving with the resulting benefits to Highland Avenue as a competitive business street.

In levying the assessment on Ivar Avenue and other streets in the Five Finger Plan it was the opinion of the Bureau of Assessments that the amount actually assessed against each individual parcel in the assessment district, including all those fronting on Ivar

Avenue, not only collectively exceeded the collective estimated actual benefit to accrue to those parcels from the street proceeding, but that in each individual case the assessment levied against the individual parcel was in excess of the actual benefit estimated to accrue to that parcel in said proceeding, but each parcel was assessed its fair proportion of the total expense of said proceeding based upon the relative benefit which each lot would enjoy from that proceeding.

Though the final amounts levied against the individual parcels, while in excess of the actual benefit to accrue, nevertheless had to be placed against these parcels in order that they would total the grand total cost of the proposed improvements, less said allocation. In other words, the actual benefit assessment had to be stepped up proportionately and mathematically so that the total of the assessment so increased equal the total cost which had to be raised by the assessment.

That on Cahuenga Avenue between Highland Avenue and Dix Street in said Five Finger Plan, there was levied upon the frontage of Cahuenga Avenue, as widened, assessments of approximately $75.00 per front foot to pay for the cost of said proceeding. The detail of these assessments in shown in Schedule 2 attached.

That in levying said assessment on Cahuenga Avenue it was recognized that it was unlikely that there would be any appreciable change in the residential character of the improvements put upon said respective parcels on Cahuenga Avenue between said streets, despite said widening of Cahuenga Avenue by this proceeding, at least for a long time forward, for various reasons, including the following: Cahuenga Avenue at this point has a heavy grade and a winding street and is somewhat distant from the business section of Hollywood; the hinterland behind Cahuenga Avenue here is very hilly and would not support much business; there was already upon said lots residences involving heavy investment and in addition some residential income property, which would not justify them being moved off to be replaced by business buildings.

That attached hereto are four schedules, which show the following:

Schedule 1. Amounts of the awards given in said Superior Court case No. 202550, for land taken to open and widen Ivar Avenue in said street proceeding, and opposite the amount of award the amount of assessment which was levied against the remainder of the parcel, part of which was taken in said street

proceeding, so as to enable comparison to be made between said award for the land taken and the amount of assessment against the remainder. The amount of award is the amount for the land taken and does not include any severance damage to the remainder or award for buildings destroyed or taken, or any reconditioning of any buildings.

Footnote of Schedule 1 contains a detailed analysis of total award for land, severance and improvements on Ivar Avenue corresponding to the parcel numbers set forth in the text of Schedule 1.

Schedule 2. Total amount of awards for land taken on Cahuenga Avenue between Highland Avenue and Dix Street in said Street proceeding, (including severance, and damage to buildings) and amount of assessment levied against the remainder of said parcels in said street proceeding to pay the cost thereof.

That Parcel No. 151 in said case No. 202550 was awarded for land taken the sum of $23,549.00, and the remainder thereof was assessed the sum of $38,713.60.

That the total of the awards in the block in which said parcel #151 is located, to-wit, on Ivar Avenue, as opened up between Selma Avenue and Sunset Boulevard, for the land taken was $217,209.00, and the assessments levied upon the remainder of the parcels, from which said award was given, amounted to $188,044.41, or approximately 86% of the amounts of awards for the land taken.

That on the whole of Ivar Avenue opened or widened by said proceeding, the amount received for land taken in said proceeding (exclusive of loss or damage to buildings or severance damage to the remainder) by those receiving awards was $637,563, while these same persons paid upon the remainder of the parcels part of which was taken in said proceeding $443,432.73, that is to say they paid back by way of assessment upon the remainder 69.5% of the total amount received by them as awards solely for the land taken, irrespective of any building damage or severance.

Respectfully submitted:

Bureau of Assessments

By.....
Laurence J. Thompson
Chief of Opening and Widening Division.

SCHEDULE 1.

Ivar Avenue Comparison of Awards and Assessments.

This schedule shows amount of the awards given in said Superior Court case No. 202550, for land taken to open and widen Ivar Avenue in said street proceeding, and opposite the amount of award the amount of assessment which was levied against the remainder of the parcel, part of which was taken in said street proceeding, so as to enable comparison to be made between said award for the land taken and the amount of assessment against the remainder. The amount of award is the amount for the land taken and does not include any severance damage to the remainder or award for buildings destroyed or taken, or any reconditioning of any buildings.

IVAR AVENUE—Yucca to Hollywood

Parcel No.	Award for land taken	Assessment No.	Amount
98	17,431	(213	4,447.98
		(214	5,597.41
99	2,640	215	8,319.17
100	3,868	216	11,785.49
101	3,042	217	9,012.43
102	3,133	218	9,012.43
103	2,480	219	6,932.64
104	2,550	(220	2,079.79
		(221	4,852.85
105	3,519	(222	4,159.58
		(223	4,852.85
106	4,675	(224	4,159.58
		(225	7,625.90
107	1	(226	1.00
		(227	1.00
	$ 43,339		$ 82,840.10

HOLLYWOOD TO SELMA

Parcel No.	Award for land taken	Assessment No.	Amount
141	160,000	462	23,293.67
142	17,995	458	27,988.80
143	126,000	463	32,701.27
144	38,870	(453	12,132.12

Parcel No.	Award for land taken	Assessment No.	Amount
		(454	12,132.12
		(455	12,132.12
		(456	12,132.12
		(457	12,132.12
145	5,085	452	12,132.12
146	29,465	473	15,771.76
	$377,415		$172,548.22

SELMA TO SUNSET

Parcel No.	Award for land taken	Assessment No.	Amount
147-148	8,352	(451	4,355.43
		(430	7,962.14
149	65,242	(428	12,317.57
		(429	12,317.57
		(431	7,021.03
		(432	13,026.43
		(433	10,743.86
150	11,578	(434	6,683.07
		(435	9,244.68
151	23,549	(398	19,243.28
		(436	19,470.32
152	16,118	(397	9,100.82
		(437	9,043.63
153	70,180	438	21,082.16
154	18,890	395	12,998.70
155	3,300	396	13,433.72
	$217,209		$188,044.41

Total of above totals	$ 43,339	$ 82,840.10
	377,415	172,548.22
	217,209	188,044.41
Grand totals	$637,963	$443,432.73

(1) This footnote gives a detailed analysis of total award for land, severance and improvements on Ivar Avenue corresponding to the parcel numbers set forth in the text of Schedule 1.

Segregation of Awards on Ivar Avenue

Yucca to Hollywood

Parcel No.	Land	Severance	Improvements	Total
98	17,431	12,174	10	29,615
99	2,640	.....	70	2,710
100	3,868	.....	55	3,923
101	3,042	.....	25	3,067
102	3,133	.....	12	3,145
103	2,480	.....	10	2,490
104	2,550	.....	10	2,560
105	3,519	.....	23	3,542
106	4,675	.....	....	4,675
107	1	.....	....	1
	$ 43,339	$12,174	$ 215	$55,728

Hollywood to Selma

Parcel No.	Land	Severance	Improvements	Total
141	160,000	16,000	2,496	178,496
142	17,995	.....	787	18,782
143	126,000	.....	35,209	161,209
144	38,870	7,628	1,963	48,461
145	5,085	.....	.....	5,085
146	29,465	4,926	3,109	37,500
	$377,415	$28,554	$43,564	$449,533

Selma to Sunset

Parcel No.	Land	Severance	Improvements	Total
147-8	8,352	3,018	4,338	15,708
149	65,242	13,308	9,394	87,944
150	11,578	1,436	3,490	16,504
151	23,549	4,006	10,267	37,822
152	16,118	4,372	12,472	32,962

Asst. No.	Amount	Asst. No.	Amount	Asst No.	Amount
646	7885.88	805	1247.88	758	1774.76
603	5199.48	800	1247.88	756	9575.97
604	5199.48	799	1247.88	755	11,893.90
610	2249.30	820	1299.87	568	819.44
643	7255.36	821	1299.87	569	3018.47
611	4977.64	794	1247.88	570	2599.74
642	3284.69	785	4285.20	571	2599.74
640	3303.40	826	65,998.74	572	2599.74
639	869.35	784	8624.07	574a	363.96
638	1936.98	780	6884.63	574b	259.97
637	2870.11	779	2487.95	563	836.08
636	3377.58	775	2599.74	562	823.08
635	1604.91	776	2599.74	580	519.95
612	1067.63	774	2599.74	581	519.95
617	2538.04	773	2599.74	559	6214.03
618	2131.79	772	2599.74	558	3466.32
619	1448.92	789	755.48	557	3466.32
620	3466.32	790	680.09	556	1386.53
621	3466.32	791	680.09	555	1386.53
622	3466.32	792	680.09	554	2773.06
623	3466.32	793	1510.97	553	2079.79
624	4052.82	770	2495.75	552	2079.79
551	1386.53	1110	1948.77	1094	2079.79
550	3466.32	1111	2255.88	1344	2079.79
549	3466 32	1112	2255.88	1345	2079.79
548	4159.58	1095	2079.79	1346	2079.79
587	818.74	1096	2079.79	1347	2079.79
588	3466.32	1097	2079.79	1348	2079.79
589	3466.32	1098	2079.79	1349	2079.79
590	1733.16	1099	2079.79	1350	2079.79
591	1733.16	1100	2079.79	1351	2079.79
592	3466.32	1101	2079.79	1352	2079.79
593	4159.58	1102	2079.79	1353	2079.79
594	6200.55	1103	2079.79	1354	2079.79
547	9903.97	1104	2079.79	1355	2279.45
1072	3582.79	1105	2079.79	1302	2279.45
1073	1880.83	1106	2275.29	1303	2079.79
1074	2343.23	1083	2275.29	1304	2079.79
1075	2253.11	1084	2079.79	1305	2079.79
1076	2253.11	1085	2079.79	1306	2079 79

Asst. No.	Amount	Asst. No.	Amount	Asst No.	Amount
1077	2253.11	1086	2079.79	1307	2079.79
1078	2253.11	1087	2079.79	1308	2079.79
1079	4511.76	1088	2079.79	1309	2079.79
1080	2255.88	1089	2079.79	1310	2079.79
1082	1665.22	1090	2079.79	1311	2079.79
1107	2255.88	1091	2079.79	1312	2079.79
1108	2255.88	1092	2079.79	1314	1551.53
1109	1804.57	1093	2079.79	1343	2287.77
1342	2079.79	1280	1733.16	1258	1733.16
1341	1663.83	1281	1733.16	1257	1733.16
1340	1663.83	1282	1733.16	1256	1733.16
1339	1663.83	1283	1733.16	1255	1733.16
1338	1663.83	1284	1733.16	1254	1733.16
1337	1663.83	1285	1733.16	1253	1733.16
1336	2079.79	1286	1733.16	1252	1733.16
1335	2079.79	1287	1733.16	1251	1906.48
1334	2079.79	1288	1733.16	1290	1733.16
1333	2079.79	1289	1906.48	1291	1733.16
1332	2079.79	1276	1335.57	1292	1733.16
1331	2130.40	1273	1733.16	1293	1733.16
1328	1652.19	1272	1733.16	1294	1733.16
1325	2079.79	1271	1733.16	1295	1733.16
1324	2079.79	1270	1733.16	1296	1733.16
1323	2079.79	1269	1733.16	1297	1733.16
1322	2079.79	1268	1733.16	1298	1733.16
1321	2079.79	1267	1733.16	1299	1733.16
1320	2079.79	1266	1733.16	1300	1733.16
1319	2079.79	1265	1733.16	1301	1899.54
1318	2079.79	1264	1733.16	1044	1733.16
1317	2079.79	1263	1906.48	1045	1733.16
1316	2079.79	1262	1733.16	1046	1733.16
1315	2287.77	1261	1733.16	1047	1733.16
1278	1828.48	1260	1733.16	1048	1733.16
1279	1733.16	1259	1733.16	1049	1733.16
1050	1733.16	1023	1715.83		

Asst. No.	Amount	Asst. No.	Amount
89	2,582.06	54	3,882.28
93	1,294.32	55	3,882.28
20	1,632.00	56	3,882.28
23	2,270.44	57	3,882.28
24	2,057.61	58	3,882.28
25	2,600.00	59	3,882.28
26	2,600.00	60	3,959.00
27	2,580.33		
28	2,750.18	Total—	$190,412.16
(94	7,225.90		
(95	1,776.13		
(96	1,732.47		
(97	3,508.60		
98	1,753.96		
99	1,753.96		

State of California, County of Los Angeles—ss.

Laurence J. Thompson, being first duly sworn deposes and says: That he is chief of the Opening and Widening division of the Bureau of Assessments of the City of Los Angeles, and as such chief he is fully familiar with all the proceedings mentioned in the within certificate, and with the action taken under and pursuant to said proceedings. That he has read the foregoing certificate and knows the contents thereof, and that same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it, and each and every statement therein made, to be true.

Laurence J. Thompson

Subscribed and sworn to before me this 1st day of March, 1935.

(Seal) August P. Coviello

Notary Public in and for the County of Los Angeles, State of California.

The Following Excerpts From the Street Opening Act of 1903, California Stats. 1903, p. 376, Approved March 24, 1903, as Amended, Are Pertinent to This Case.

"Power to open streets, etc.

"Sec. 1. Whenever the public interest or convenience may require, the city council of any muncipality shall have full power and authority to order the laying out, opening, extending, widening or straightening, * * * of any one or more of any public streets, * * * within such muncipality, and to acquire, by condemnation, any and all property necessary or convenient for that purpose or any interest therein including * * *."

"Declaration of intention. City may pay percentage.

"Sec. 2. Before ordering any improvement to be made * * * the city council shall pass an ordinance declaring its intention so to do. Said ordinance shall be sufficient if it describes the land necessary or convenient to be taken for the proposed improvement, and describes briefly and in general terms the proposed improvement and the district to be benefited by said improvement and to be assessed to pay the expense thereof, to be known as the assessment district, and refers to a map or plat, approved by the city council, which shall be on file in the office of the city clerk or city engineer at the time of passing the said ordinance which said map shall indicate the land necessary or convenient to be taken for the proposed improvement and shall indicate by a boundary line the extent of the territory to be included in the assessment district. Said map shall govern for all details as to the extent and description of the land to be taken for the proposed improvement and as to the extent of said assessment district. * * * Said city council may in its discretion declare that the whole or any percentage of, or any sum toward the expense of said improvement will be paid by said muncipality, in which case the sum or percentage to be so paid shall be stated in said ordinance of intention. (As amended, Statutes 1927, Chap. 674.)"

"Notice to be posted. Publication. Notice to be mailed to owners. Affidavit of Clerk.

"Sec. 3. The street superintendent shall thereupon cause to be conspicuously posted * * * at not more than three hundred feet apart, notices (not less than three in all) of the passage of said ordinance. * * *"

"Protests. Hearing, Notice and Decision. Jurisdiction.

"Sec. 4. Any persons interested, objecting to said improvement or to the extent of the assessment district, may file a written protest with the clerk of the city council, within thirty days after the first publication of the notice required by section three of this act. * * * " "The city council shall thereupon fix a time for hearing said protests * * * and shall cause notice of the time of such hearing to be published * * * At the time set for hearing said protests, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; * * *" "If no protests in writing have been filed within the time hereinbefore provided for filing the same, or * * * be found by the city council to be insufficient, or shall be overruled, or if a protest against the proposed assessment district shall be heard and denied, immediately thereupon the city council shall be deemed to *acquire jurisdiction to order the proposed improvement.* (As amended, Statutes 1927, Chap. 674.)"

"Actions, when to be brought. Procedure.

"Sec. 6. Upon the passage of said ordinance ordering said improvement, the city attorney shall bring said action * * * Said action shall in all respects be subject to and governed by such provisions of the Code of Civil Procedure * * * except in the particulars otherwise provided for in this act. (Amended, Statutes 1925, p. 87.)"

"Complaint, what shall set forth.

"Sec. 7. The complaint shall set forth, or state the effect of, the ordinance of intention, and the ordinance ordering the improvement, but need not set up any other proceedings had before the bringing of the action. *Said ordinances shall be conclusive evidence, in such action, of the public necessity of the proposed improvement,* and also that the same is located in the manner which will be most *compatible with the greatest public good and the least private injury.*"

"Abandonment of proceedings.

"Sec. 14. The city council may, *at any time prior to the payment* of the compensation awarded the defendants, abandon the proceedings, by ordinance, and cause the said action to be dismissed, without prejudice; and if any of the assessments levied to pay the expense of the improvements, as hereinafter provided, shall have been actually paid in money at the time of such abandonment, the same shall be refunded to the persons by whom they were paid. If the proceedings be abandoned or the action dismissed no attorney's fees shall be awarded the defendants or either or any of them. (Amendment approved April 12, 1911. Statutes 1911, p. 894. Also amended in 1909. Statutes 1909, p. 1040.)

"Diagram of improvement.

"Sec. 15. Upon the *entry of the interlocutory judgment,* the city council shall order the city engineer * * * to make and deliver to the street superintendent, a diagram of the improvement and of the property within the assessment district described in the ordinance of intention. Said diagram shall show the land to be taken for the proposed improvement, and also each separate lot, piece or parcel of land within the assessment district, and the dimensions of each such lot, piece, or parcel of land, and the relative location of the same to the proposed improvement."

"Assessment, how made and what to show.

"Sec. 17. The street superintendent shall make the said assessment in writing. Such assessment shall describe each lot, piece, or parcel of land assessed for said improvement, and shall designate each such lot, piece, or parcel of land with an appropriate number. The street superintendent shall also designate each such lot, piece, or parcel of land on said diagram, with the number corresponding with the number thereof in said assessment, and said diagram shall thereupon be attached to and become and be deemed to be a part of said assessment. Such assessment shall show the total sum to be raised thereby, as hereinbefore provided, and also the items of such total sum, and opposite each lot, piece, or parcel of land assessed, the amount assessed thereon, and the name of the owner thereof, if known to the street superintendent; or if the owner's name is unknown, the word 'Unknown' shall be written instead of such name.

"Notice of filing of assessment.

"Sec. 18. As soon as said assessment is completed the street superintendent shall file the same * * * with the clerk of the council, who shall give notice of such filing by publication * * * Said notice shall require all persons interested to file with said clerk their objections, if any they have, to the confirmation of said assessment, within thirty days after the date of the first publication of such notice, which date shall be stated in said notice.

"Objections.

"Sec. 19. All objections shall be in writing and shall be filed with said clerk within the time prescribed in the notice required by section 18 hereof. The clerk shall * * * lay said assessment and all objections so filed with him, before the council; and said council shall hear all such objections at said meeting, or at any other time to which the hearing thereof may be adjourned, and pass upon such assessment, and may confirm, modify, or correct said assessment, or may order a new assessment, upon which like proceedings shall be had, as in the case of an original assessment; or if there be no objections, the council shall, at any regular meeting after the expiration of the time for filing objections, confirm such assessment, and the action of the council upon such objections and assessment shall be final and conclusive in the premises."

"Delinquent assessment. Notice. Sale.

"Sec. 23. The street superintendent shall, within ten days from the date of such delinquency, begin the publication of a list of the delinquent assessment * * * The *street superintendent shall* publish a * * * *notice that unless each assessment delinquent* * * * thereon, *is paid,* the *property upon which such assessment is a lien, will be sold at public auction at a time and place to be specified in the notice.* * * *"

"Deed, when executed. Cost. Service of Notice. Redemption.

"Sec. 28. At any time after the expiration of twelve months from the date of sale, the street superintendent must execute to the purchaser or his assignee on his application, if such purchaser or assignee has complied with the provisions of this section, a deed of the property sold, in which shall be recited substantially the matters contained in the certificate, also any assignment thereof and the fact that no person has redeemed the property. * * *"

"Deed is prima facie regular.

"Sec. 29. The deed of the street superintendent shall be *prima facie* evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the execution thereof, and of title in the grantee."